United Nations E/AC.51/2005/5

Economic and Social Council

Distr.: General
17 March 2005

Original: English

Committee for Programme and Coordination
Forty-fifth session
6 June-1 July 2005
Item 4 (c) of the provisional agenda*
Programme questions: evaluation

Triennial review of the implementation of the recommendations made by the Committee for Programme and Coordination at its forty-second session on the in-depth evaluation of legal affairs

Note by the Secretary-General

In conformity with General Assembly resolution 48/218 B of 29 July 1994 and 54/244 of 23 December 1999, the Secretary-General has the honour to transmit herewith the report of the Office of Internal Oversight Services on the triennial review of the implementation of the recommendations made by the Committee for Programme and Coordination at its forty-second session on the in-depth evaluation of legal affairs.

* E/AC.51/2005/1.

05-27738 (E) 110405

Report of the Office of Internal Oversight Services on the triennial review of the implementation of the recommendations made by the Committee for Programme and Coordination at its forty-second session on the in-depth evaluation of legal affairs

Summary

The present report of the Office of Internal Oversight Services is submitted in accordance with the decision taken by the Committee for Programme and Coordination at its twenty-second session to review the implementation of its recommendations three years after taking decisions on an in-depth evaluation.

The present triennial review concludes that the Office of Legal Affairs has implemented or taken adequate measures towards implementing most of the recommendations of the evaluation of legal affairs endorsed by the Committee. As a result, positive changes are noted in, inter alia, the efforts of the Office to provide approved model contracts and for discussion of frequently raised legal issues on the web site of the General Legal Division, to improve early legal assistance in the preparation of complex or innovative commercial contracts, to conduct regional courses and seminars in the context of the fellowship programme in international law and on the work of the Treaty Section, to enhance coordination with trade law organizations, and to curtail the backlog in the issuance of official translations of treaty publications. Problems are noted in the efforts of the Office to implement recommendations on the legal implications of the new orientations of Secretariat programmes, on the reinforcement of the general legal capacity in other departments and offices and on the *Repertory of Practice of United Nations Organs*, and further recommendations are made in this regard.

I. Introduction

1. At its forty-second session in 2002, the Committee for Programme and Coordination considered the report of the Office of Internal Oversight Services (OIOS) on the in-depth evaluation of legal affairs (E/AC.51/2002/5). The Committee endorsed recommendations 1 to 7, 9 and 11 to 20 contained in the report.[1]

2. The present report of OIOS describes the extent to which the above-mentioned recommendations, made three years ago, have been implemented. The status of implementation is discussed with respect to (a) central legal services, (b) Secretariat services and treaty matters and (c) review by the Sixth Committee. The report also reflects new developments in legal affairs as they pertain to the implementation and outcomes of the recommendations.

3. The programme, Legal affairs, is implemented by the Office of Legal Affairs. The in-depth evaluation of the programme concluded that in providing a unified central services for the Secretariat and organs of the United Nations, the overall performance of the Office had been competent, and in some instances exemplary; that the Office had effectively sustained the evolution of legal arrangements related to peacekeeping, taken the necessary measures to assist the international tribunals and supported the developments and the adoption of a number of important instruments in international public and trade law; and that, in well-defined areas of the United Nations legal framework, such as constitutional or procedural matters, the advice provided by the Office had been authoritative and solution-oriented (E/AC.51/2002/5, para. 78).

4. The present triennial review was based on: (a) the information provided by the Office of Legal Affairs on the progress made in implementing the recommendations of the Committee for Programme and Coordination, a process monitored twice a year by OIOS; (b) a review early in 2005 of documents obtained from the Office; and (c) consultations held early in 2005 with staff of the Office of Legal Affairs and other offices in the Secretariat. A draft of the report was made available for review to the Office of Legal Affairs and other Secretariat units mentioned in it; dissenting views are reproduced below in italics.

II. Findings

A. Central legal services

1. Overall direction, management and coordination of legal advice and services provided to the United Nations as a whole

Recommendation 1
Legal implications of new orientations of United Nations programmes

Expanding on present practice, the Office of Legal Affairs should systematically be involved in the development and review of new programmes, before they are

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 16* (A/57/16), para. 289.

adopted by the United Nations, and of new approaches being considered or used in programme delivery, in order to clarify the legal implications of these new developments or approaches. Based on these reviews, the Office should issue guidelines to facilitate the implementation of strategies and programmes while protecting the interests of the Organization. This effort should be coordinated through existing Secretariat coordinating mechanisms

5. The Office of Legal Affairs maintains that the decision to seek legal advice rests with the department concerned and that the formulation of general guidelines is not feasible. Guidelines in specific areas have been formulated. Guidelines on cooperation between the United Nations and the business community, for example, were issued by the Secretary-General in July 2000. In instances in which the General Legal Division is invited to become involved, it provides analysis to assist its client offices. However, there is no systematic practice of inviting the Division at the development stage and in some cases even the review stage, of new programmes.

6. OIOS informed the Office of Legal Affairs that it should proactively obtain the recommended collaboration from other programmes and that, consequently, the recommendation had not been implemented. In response, the Legal Counsel requested that the following views be recorded:

> *"My senior managers and I are not prepared to accept this suggestion since only the Secretary-General can require or even request all departments, funds and programmes to seek the advice of the Office of Legal Affairs in these circumstances. I might note that the implementation of any such plan would probably require extra resources for the Office of the Legal Counsel and the General Legal Division".*

Recommendation 2
Dissemination of information to assist other departments and offices in their administrative and substantive functions

(a) **The Office of Legal Affairs should provide basic information on the legal aspects of the most frequent administrative actions needed to carry out United Nations programmes and on the assistance that the Office can offer. This information should take into account the lessons learned from the legal difficulties faced by the Organization and it should be disseminated through the United Nations Intranet or other channels to ensure easy access by staff involved in the implementation of programmes. The Office of Legal Affairs should consider disseminating legal information useful to administrative and substantive staff through such channels as orientation and training courses organized by other departments and offices;**

(b) **To facilitate the drafting and consistency of contracts and agreements, the Office of Legal Affairs should jointly maintain, with the main users of such documents, a reference collection of actual contracts and agreements drafted in recent years to be used as precedents in the variety of situations that arise. This reference material should be updated regularly with instructive practices sought from end-users**

7. The Office of the Legal Counsel maintains close contacts with its recurring clients, such as the Department of Peacekeeping Operations and the Department for General Assembly and Conference Management. The Office provides training seminars at the request of these departments, such as the biannual seminar on rules of procedure. The General Legal Division conducts periodic seminars that serve to orient and train client offices. In addition, the Division, in conjunction with the Office of the Legal Counsel, provides training to legal advisers to peacekeeping operations in areas in which they are typically required to provide legal advice and assistance. The training consists of two parts, that is, structured briefings and hands-on training with legal officers from the Office of Legal Affairs.

8. In March 2003, the General Legal Division made a presentation on legal issues related to procurement, the United Nations General Conditions of Contract and other frequently raised legal issues at a conference in New York that had been arranged by the Procurement Service for senior procurement officers from peacekeeping missions, offices away from Headquarters and international tribunals. In April 2004, the General Legal Division made a presentation on the General Conditions of Contract at a conference in New York, arranged by the Procurement Service for chiefs of procurement from peacekeeping and other field offices. A working group on the comprehensive revision of the General Conditions of Contract held its first meeting in July 2004; the revisions are expected to be finalized in mid-2005. The General Legal Division is proposing to conduct seminars in 2005 for the Procurement Service on software licence agreements, performance bonds and liquidated damages.

9. The web site of the General Legal Division contained, as at February 2005:

(a) Nine approved model contracts for, inter alia, goods and services, licensing of software, banking services and real estate services;

(b) Segments on the United Nations General Conditions of Contract, other legal documents and links to the Procurement Manual, the Financial Rules and Regulations of the United Nations, the Convention on the Privileges and Immunities of the United Nations and other items;

(c) Discussions of frequently raised legal issues.

The Office of Legal Affairs informed OIOS that these materials are reviewed periodically and updated when necessary.

10. OIOS considers that this recommendation has been implemented.

2. General legal services provided to United Nations organs and programmes

Recommendation 3
Delivery of common services to the United Nations and affiliated funds and programmes

(a) The system of clusters established by the General Legal Division to facilitate communication with users of services should be supplemented with a list of the Division's lawyers, who will act as contacts for different programmes. This list should be made available on the Intranet and other channels to streamline the processing of new requests for assistance and facilitate informal consultations;

(b) The General Legal Division should adopt processes and standards that would ensure immediate response to the programmes that require a faster response time than is the norm at present, or should propose outposting legal officers, as an exceptional arrangement, when it is the most effective option, to such entities as the Headquarters Procurement Division[2] and the headquarters offices of the separate funds and programmes

11. The General Legal Division has provided client offices with its organizational structure, including the assignment of lawyers to each of its four clusters. This information is also available in the United Nations telephone directory.

12. The General Legal Division has adopted procedures and processes for ensuring timely responses to requests, including prioritizing requests as they are received and monitoring requests at multiple levels within the Division. The requesting offices indicate the urgency of the request and the Division determines actual needs insofar as rapidity of response based on that indication and further discussion, if needed.

13. One Senior Legal Officer was outposted to the United Nations Interim Administration Mission in Kosovo (UNMIK) from November 2002 to May 2003, one Legal Officer was assigned to UNMIK from November 2003 through June 2004 and another Legal Officer was assigned to the United Nations Mission in Côte d'Ivoire (MINUCI) (subsequently replaced by the United Nations Operation in Côte d'Ivoire (ONUCI)) from August 2003 through July 2004. A Senior Legal Officer has been assigned to the United Nations Stabilization Mission in Haiti (MINUSTAH) since July 2004.

14. A more general approach to improving the delivery of legal services in the Secretariat, including the funds and programmes, has been the convening of meetings of United Nations legal liaison officers/advisers. The first such meeting was held in January 2003, when it was agreed that they would be held annually. The second meeting was held in December 2003, the third in December 2004 and the next is expected to be held in December 2005. The General Legal Division assists the Legal Counsel in organizing and hosting the meetings. A number of issues of common interest have been discussed at the meetings, including personnel and financial matters, relations with the private sector and the use of the United Nations name and emblem.

15. OIOS considers that this recommendation has been implemented.

Recommendation 4
Requirements for support to peacekeeping

(a) The Office of Legal Affairs should participate in the review of requirements for early deployment of experienced support staff to missions and identify the legal officers, within and outside the Office, who will form part of the Secretariat standby capacity;

(b) The Office of Legal Affairs should ensure that all peacekeeping and other missions where legal assistance is required are staffed with legal officers familiar with the United Nations legal framework, regulations and rules. The Office should review qualifications of individuals proposed as legal officers for

[2] Subsequently renamed Procurement Service.

peacekeeping mission assignments. Peacekeeping missions should, at least once a year, seek the technical views of the Office on the quality of legal services provided at the missions. Legal officers of the Office should visit the missions as needed to provide required guidance

16. The Office of Legal Affairs regularly reviews candidates at all levels proposed by the Department of Peacekeeping Operations within the legal offices established by missions. The Department provides the Office with a shortlist of candidates and the Office provides recommendations; the final decision is that of the Department. This procedure serves to identify standby capacity to some degree. The compendium of vacancies has attracted applications for service in field missions from legal officers already serving in the United Nations system.

17. A Senior Legal Officer visited Haiti in March 2004 with the assessment mission and subsequently with the technical preparatory team in May 2004. The same Senior Legal Officer visited the Sudan in December 2004 to assist the Department of Peacekeeping Operations and the Procurement Service in contract negotiations. Two senior legal officers from the Office of the Legal Counsel and the General Legal Division were scheduled to visit the United Nations Mission in the Democratic Republic of the Congo (MONUC) from 7 to 11 June 2004 to cover all aspects of the MONUC legal work. However, owing to the outbreak of hostilities in the Democratic Republic of the Congo, their visit had to be cancelled. In a visit to the United Nations Truce Supervision Organization (UNTSO) at the end of January 2005, the General Legal Division provided assistance in the settlement of a long-outstanding legal dispute and took the opportunity to consult and offer guidance in regard to the legal advice being provided to the mission. The Office of Legal Affairs will consult further with the Department of Peacekeeping Operations to identify a prioritized list of the missions that require visits by staff of the Office in 2005. OIOS noted that the legal officers of UNMIK, and to a lesser extent some other peacekeeping missions, regularly request advice from the Office of Legal Affairs, both formally and informally.

18. OIOS considers that this recommendation has been implemented.

Recommendation 5
General legal capacity in other United Nations departments and offices

(a) Departments and offices that require additional general legal assistance should consult the Office of Legal Affairs for advice on the most effective options to address their needs, the preferred option being the outposting of OLA officers

(b) The Office of Human Resources Management should submit job descriptions of positions at Headquarters and other offices that contain general legal functions to the Office of Legal Affairs for review. Where necessary, job descriptions should specify provisions for delegation of authority to provide legal advice on behalf of the Legal Counsel;

(c) Secretariat departments and offices recruiting personnel to positions with general legal functions not under the administrative control of the Legal Counsel should seek the technical views of the Office of Legal Affairs on the qualifications of the candidates and, periodically, on the quality of legal services provided by such personnel

19. The Office of Legal Affairs has been engaged in ongoing discussions with offices, funds and programmes regarding outposting and other arrangements. In 2002, the Office of Human Resources Management forwarded to the Office of Legal Affairs for review a draft job description of a proposed legal position at the United Nations Office at Nairobi. Some correspondence between the Legal Counsel and the Director-General of the United Nations Office at Nairobi was exchanged on this matter in 2003. The vacancy announcement for the post of Senior Legal Officer at Nairobi (P-5 level) was issued in May 2004, and the selection process is expected to be completed by the end of February 2005.

20. The Office of the United Nations High Commissioner for Refugees requested the Office of Legal Affairs to review three shortlisted candidates for the post of Chief, Legal Affairs Section (P-5 level). The Office of Legal Affairs informed OIOS that the Legal Counsel had provided oral comments to the Office of the High Commissioner.

21. OIOS does not consider that this recommendation has been implemented. Its view is that the Office of Legal Affairs is expected actively to seek the recommended collaboration from other programmes. In response, the Legal Counsel requested that the following views be recorded:

> *"My senior managers and I are not prepared to accept this suggestion since only the Secretary-General can require or even request all departments, funds and programmes to seek the advice of the Office of Legal Affairs in these circumstances. I might note that the implementation of any such plan would probably require extra resources for the Office of the Legal Counsel and the General Legal Division".*

Recommendation 6
Commercial claims against the Organization: alternative dispute resolution mechanisms

The Office of Legal Affairs should consult the Procurement Division [Service] and the relevant units in the Field Administration and Logistics Division and affiliated funds and programmes as to whether conciliation should be made a mandatory step before a commercial dispute is referred to arbitration. Related amendments that might be required to the standard contract dispute settlement clause of the United Nations General Conditions of Contract should be in full compliance with the relevant provisions of the Convention on the Privileges and Immunities of the United Nations

22. The General Legal Division has consulted the offices referred to in recommendation 6. In this connection, the Division engaged in mediation of a contract claim with a view to reassessing the benefits of this dispute settlement mechanism and its appropriateness for the United Nations.

23. The mediation case in question was completed at the end of May 2004. The General Legal Division concluded that the mandatory use of alternative dispute resolution mechanisms, before a dispute is submitted to arbitration, would not always be in the interests of the Organization. Instead, having considered the OIOS recommendation, and in the light of the aforementioned experience, the Division has concluded that it would be useful for disputes to be submitted to conciliation, if the parties agree to do so, on a case-by-case basis.

24. OIOS considers that this recommendation has been implemented.

Recommendation 7
Early legal assistance in the preparation of complex or innovative commercial contracts

Once a need for the procurement of a particular service or item requiring a complex or innovative contract has been identified, the requisitioning department, the Procurement Division [Service] and the Office of Legal Affairs should consider forming a team so that all major legal issues that are likely to arise can be addressed early on in the process, that is, before the formulation of a request for proposal or an invitation to bid. The Office of Legal Affairs and the users of its services should develop a set of criteria to facilitate identification of higher risk procurement situations that may require the involvement of the Office in the early stage of procurement planning

25. The General Legal Division generally follows the practice outlined in recommendation 7 but is dependent on the Procurement Service to identify complex or innovative contracts at a sufficiently early stage and to seek the assistance of the Office of Legal Affairs. The Division formally meets with the Procurement Service each month and with other procurement clients every second month, both for this purpose and to review the status of current matters. The Division requests its clients, where possible, to bring to these meetings a list of the requests for advice that they anticipate forwarding to the Division in the ensuing three months.

26. In December 2002, the General Legal Division proposed to the Procurement Service that a team composed of the requisitioner, the Procurement Service and the Office of Legal Affairs should be convened at an early stage in the procurement process so that major legal issues that were likely to arise could be addressed. The Procurement Service instead proposed an amendment to the Procurement Manual that would deal with the issue. The General Legal Division revised the draft amendment, incorporating in it suggested criteria for the application of the provision; the amendment has now been adopted as section 9.8 of the Procurement Manual. The suggested criteria read as follows: "... the procurement is of an especially high value, presents novel legal issues, or poses a serious risk of damage to property or injury".

27. OIOS considers that this recommendation has been implemented.

B. Secretariat services and treaty matters

Recommendation 9
Governments' comments and information requested by United Nations organs

Considering the low response rate of Governments to requests for comments and information by United Nations organs, the Office of Legal Affairs should review the results of measures taken in other areas of the United Nations to improve the response rates of Governments. Based on this review, the Office should make proposals to the Sixth Committee to adopt measures that would be appropriate

28. The Office of Legal Affairs contacted the relevant Secretariat units and concluded, based on the replies received, that the nature of the questionnaire (standardized, statistical, containing guidelines), ownership and interest generated by the subject matter, as well as the time allocated for replies, were relevant considerations to be factored into the question of the response rates of Governments.

29. The International Law Commission, at its forth-eighth session held in 1996, stated that in many cases requests by the Commission for comments, or even for information, went unanswered; as indicated in a related footnote, the numbers of written responses by Government to Commission's questionnaires on some recent topics varied from a low of 13 to a high of 30.[3] In recent years, the response rates have been lower still. A document of the Commission dated 18 April 2002, on replies from Governments to a questionnaire on unilateral acts of States (A/CN.4/524), records responses from only three Governments. A document of the Commission dated 6 August 2004, on the responsibility of international organizations (A/CN.4/547), records responses from only four Governments. In presenting his report to the Sixth Committee on 1 November 2004, the Chairman of the International Law Commission noted that the Commission had elaborated further on the questions on which the views of Governments were of particular interest to it, that the Commission encouraged Governments to submit comments in writing on any of its topics and that it relied on the Sixth Committee for advice from Governments and for their reactions to larger policy issues and to provide those State practices that were not readily available (see A/C.6/59/SR.17). In paragraph 3 of its resolution 59/41 of 2 December, concerning the report of the International Law Commission on the work of its fifty-sixth session, the General Assembly drew the attention of Governments to the importance for the International Law Commission of having their views on the various aspects involved in the topics on the agenda of the Commission identified in chapter III of its report.

30. Although the results have not been encouraging, OIOS recognizes that the Office of Legal Affairs is committed to continuing to assist the legislative organs in taking measures to improve governmental response rates and considers that this recommendation continues to be implemented.

[3] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 10* (A/51/10 and Corr.1), para. 181.

Recommendation 11
Regional issues and the fellowship programme in international law

The Office of Legal Affairs should review, with its co-organizers, the course design of the fellowship programme in order to ensure that more attention is given to issues of concern in different regions, through such approaches as the organization within the programme of regional workshops

31. The Office of Legal Affairs considers that in designing the fellowship programmes in international law it takes account of the areas in international law in which developing countries could have substantial interest and relevance, but that the programme is not and cannot be focused on regional issues, since the fellows come from developing countries in the various regions of the world. In its regional refresher courses, however, the focus is on areas of international law of direct relevance to the region for which the course is organized. In the regional course for Latin American countries, held in Quito in February 2004, the topics covered in the two-week course included recent developments in international law and the inter-American system for the promotion and protection of human rights, as well as international humanitarian law, international criminal law and the law of the sea.

32. In the expectation that more regional courses will be organized as funds permit, OIOS considers that this recommendation has been implemented.

Recommendation 12
Repertory of Practice of United Nations Organs

To eliminate the backlog in the publication of the *Repertory* at a faster pace, the Office of Legal Affairs should formulate a strategy to eliminate the backlog by 2007. Based on its experience in the elimination of the backlog in the publication of treaties, the Office should review the practicality of establishing a central *Repertory* section until the backlog is eliminated and present the strategy to the appropriate review bodies

33. In the proposed programme budget for the biennium 2004-2005, the Secretary-General did not request funds for continued work on the *Repertory of Practice of United Nations Organs*, stating that the *Repertory* would no longer be produced (A/58/6 (Sect. 29B), para. 29B.17). By paragraph 44 of its resolution 58/270 of 23 December 2003, the General Assembly did not provide for the reinstatement of the *Repertory* as an output of the Organization for the biennium 2004-2005 and hence no resources were provided for its implementation; it did, however, request the Secretary-General to report, in the context of his first performance report, on the possibilities for absorptions or the mobilization of extrabudgetary resources for the *Repertory*. At the same session, the Assembly, by paragraph 8 of resolution 58/248 of 23 December 2003, encouraged the Secretary-General in his continuous efforts to eliminate the backlog in the publication of the *Repertory*, including by exploring options involving cooperation with academic institutions.

34. The General Assembly, by paragraph 8 of resolution 59/44 of 2 December 2004, endorsed the efforts of the Secretary-General to eliminate the backlog in the publication of the *Repertory*; by paragraph 9, requested the Secretary-General to establish a trust fund to eliminate the backlog of the *Repertory*, which should accept voluntary contributions by States, private institutions and individuals; and, by

paragraph 10, also requested the Secretary-General to continue his efforts, within the level of the currently approved budget, towards making available electronically all versions of the *Repertory* as early as possible. As at the end of January 2005, the trust fund had not been established. In paragraph 11 of the same resolution, the Secretary-General was requested to submit a report to the General Assembly at its sixtieth session on, inter alia, the *Repertory*.

35. OIOS considers that Assembly resolution 59/44 establishes an adequate and appropriate reporting mechanism for Member States on this issue but that the instructions to the Secretary-General in resolutions 58/248, 58/270 and 59/44, taken together, raise problems of interpretation. A proposal for dealing with these problems is presented in paragraph 56 of the present report.

Recommendation 13
Increased coordination with trade law organizations

To enhance coordination in accordance with its basic mandate and ensure a concerted approach to common issues, the International Trade Law Branch should meet annually with key organizations working on trade law issues to share information and workplans

36. Recommendation 13 was discussed in 2003 and 2004 by working groups of the United Nations Commission on International Trade Law (UNCITRAL) and with delegates, observers and other experts. The matter was then discussed at the thirty-seventh session of UNCITRAL, held in New York from 14 to 25 June 2004.[4] At that session, UNCITRAL gave guidance to the International Trade Law Branch (subsequently renamed International Trade Law Division) on how to increase cooperation with other organizations that formulate rules on international trade. The Division has since established a technical assistance and coordination unit to carry out the coordination work in a systematic way, in line with the guidelines. For example, a survey document is being prepared for the session of the Commission in July 2005 on the current activities of other organizations in the area of trade law in order to assist the Commission in fulfilling its coordination functions; similar documents are also being prepared for the 2005 session of UNCITRAL in the areas of insolvency law and electronic commerce. A meeting was held in Rome in December 2003 and another in Vienna in November 2004 of representatives of UNCITRAL, the International Institute for the Unification of Private Law (UNIDROIT) and the Hague Conference on Private International Law to discuss issues of common concern and future plans; there is ongoing coordination with the Economic Commission for Europe and the United Nations Conference on Trade and Development on the formulation of rules on electronic commerce; two staff members of the International Trade Law Division worked on a UNIDROIT subcommittee in connection with the establishment of a security-interests registry of assets used as collateral; coordination activities are under way between the UNCITRAL secretariat and the European Commission on their legislative work in the areas of receivable financing and the carriage of goods by sea; work is being coordinated with the World Bank and the International Monetary Fund in the fields of insolvency law and secured transactions. The Division now has a system in place

[4] For the discussion, see *Official Records of the General Assembly, Fifty-ninth Session Supplement No. 17* (A/59/17), paras. 113-115.

for assisting UNCITRAL in performing its coordination functions, and coordination work is an ongoing and integral part of its work.

37. OIOS considers that this recommendation has been implemented.

Recommendation 14
Promotion of wider participation in international trade law conventions and use of model laws

(a) To promote appreciation and use of UNCITRAL texts, the International Trade Law Branch [Division] should increase the range and breadth of its technical assistance in the field of trade law reform. To achieve this, the Branch [Division] should formulate a strategy to work jointly with funding agencies supporting trade-related programmes;

(b) The Branch [Division] should also devise a strategy to enhance contributions to its trust funds and it should explore new funding from the private sector

38. The General Assembly approved three new posts (1 D-2, 1 P-5 and 1 P-2) in the programme budget for the biennium 2004-2005 for work on international trade law. The Branch was renamed a Division and, as at the end of January 2005, two of the three new posts were filled and the Division was in the process of recruiting a Professional officer to design technical assistance projects in the field of trade law reform and to find funding for them, and of adjusting the terms of reference of existing UNCITRAL trust funds to match the new emphasis. Internal guidelines for the staff of the Division have been formulated on technical assistance work. The Division considers that it has, by these means, established appropriate working methods in this area. OIOS notes that the Commission, at its thirty-seventh session, had before it a note by the Secretariat on training and technical assistance activities (A/CN.9/560), and that it requested the Secretariat to prepare a work programme and timetable for the implementation of the expanded technical assistance function, provided guidance to the Secretariat and appealed to Member States for funds.[5]

39. OIOS considers that this recommendation has been implemented.

Recommendation 15
UNCITRAL expanded programme of work

The Office of Legal Affairs should review the secretariat requirements that an expansion from three to six UNCITRAL working groups requires and present to UNCITRAL, at its upcoming review of the practical applications of the new working methods, different options that would ensure the necessary level of secretariat services

40. The review by the Office of Legal Affairs of the requirements for the International Trade Law Division has been carried out, the results discussed by the Commission and a resolution adopted.[6] OIOS considers that this recommendation has been implemented.

[5] Ibid., paras. 92-96.

[6] See ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/7), paras. 264-271.

Recommendation 16
Disseminating instructive management practices

The Office of Legal Affairs, in conjunction with the Office of Human Resources Management, should document the Treaty Section experience to eliminate the backlog of its publications. This experience, which included the use of modern technology, workload streamlining and improved management practices should be used as an instructive case study in related training modules within the United Nations system

41. The Treaty Section presented a summary of its practices to the Department of Management in 2002, as part of a submission for the UN21 Awards. Since the work of the Treaty Section had won an award several years before, it was not given another that year. The Department of Management published, in February 2003, a handbook on productivity in the United Nations, which does not contain any reference to the work of the Treaty Section. OIOS considers that the Treaty Section has documented its experience, as recommended, and that this documentation, supplemented by presentations by staff of the Treaty Section, should be used in management training courses within the United Nations.

Recommendation 17
Translation needs of the Treaty Section

(a) **As the timely issuance of treaty publications involves translation of approximately 12,000 pages during 2002, and, as under Article 102 of the Charter of the United Nations, the Secretariat is required to publish international agreements as soon as they are registered by Member States, the Treaty Section and the Department of General Assembly Affairs and Conference Services[7] should jointly prepare and execute translation plans to ensure that the backlog in Treaty publications does not re-emerge;**

(b) **In those years when the Department of General Assembly Affairs and Conference Services is unable to accommodate the needs of the Treaty Section, alternatives should be explored to ensure that the production of publications continues with minimum interruption or delay**

42. The Under-Secretary-General for Legal Affairs submits a monthly report on treaty translations to the Under-Secretary-General, Department for General Assembly and Conference Management. Regular consultations take place between the Office of Legal Affairs and the Department and, as a result, significant progress has been made by the Department in the delivery of translations on a timely basis. As at 31 December 2004, there were no outstanding translations for treaties received in 2002 and 2003, or for those received in February and March 2004. The backlog, defined as uncompleted translation requests relating to registrations more than six months old, dropped from 457 requests as at 31 December 2003 to 31 as at 31 December 2004.

43. The Treaty Section has obtained some translations for registered treaties from government databases that are accessible through the Internet, an approach which can only be applied in a limited number of cases. Registering parties have been

[7] Subsequently renamed Department for General Assembly and Conference Management.

formally requested to submit courtesy translations, and some have responded positively. The Department for General Assembly and Conference Management is also handling contractual translations through various sources, including translation firms.

44. OIOS considers that this recommendation has been implemented but notes that, as has been made clear by the Chief of the Treaty Section, with 490 registrations received in 2002, 448 in 2003 and 345 in 2004, the balance is a delicate one, and the backlog could rise again very rapidly if the rate of translation were not maintained. OIOS also notes that there are some continuing issues relating to expenditure on the translation of treaties.

Recommendation 18
Enhancing United Nations Treaty Collection web site services

The Office of Legal Affairs should undertake a systematic appraisal of the needs of the users of the United Nations Treaty Collection web site. This appraisal should review issues of user fees, relation with commercial legal database providers, text search capacity and hyperlinks with other treaty sites

45. The Treaty Section receives and reviews statistical information (hits, most common downloads, referrals from other sites, most common page views) on the use of the United Nations Treaty Collection web site. In December 2004, the web site received over 1 million hits. There is now a permanent user survey on the web site which is analysed on a regular basis and which provides a range of responses that vary from praise to technical criticisms and suggestions. A questionnaire was sent to permanent missions to the United Nations in February 2004 to seek their views on the service currently provided and on possible improvements, but yielded only a small number of responses.

46. The categories of free users at present are permanent missions to the United Nations, government offices, the agencies of the United Nations system, United Nations funds and programmes, United Nations staff, institutions and individuals in developing countries, non-governmental organizations and members of the International Law Commission. All "Focus" booklets related to the annual treaty events are available free of charge to all users. There are over 300 fee-paying users who contributed $173,950 to revenue in 2003.[8] In 2003, the Treaty Section published the status of multilateral treaties deposited with the Secretary-General as at 31 December 2002 on CD-ROM, with a seamless interface with the United Nations Treaty Collection on the Internet. The Treaty Section will produce an updated CD-ROM of the status of multilateral treaties deposited with the Secretary-General as at 31 December 2004.

47. OIOS considers that this recommendation has been implemented.

[8] Revenue figures for 2004 will be available in March 2005.

Recommendation 19
Enhanced dissemination of treaty law assistance

Building on the experience of the first training session held jointly by the Office of Legal Affairs and the United Nations Institute for Training and Research late in 2001, the Treaty Section should formulate a briefing/training strategy to disseminate treaty-making and treaty law information at the regional and national levels. It should explore opportunities for wider dissemination through United Nations agencies which are currently providing technical assistance in sectors such as human rights, good governance and the environment

48. Training seminars continue to be held in New York, the most recent being the seminar on the deposit of treaty actions with the Secretary-General and registration of treaties, convened by the Office of Legal Affairs and the United Nations Institute for Training and Research on 9 and 10 November 2004. Presentations included the following topics: depositary process; treaty implementation and reporting requirements of human rights treaties; and reservations and declarations. Altogether, 47 diplomats based in New York and representatives of 8 non-governmental organizations and regional bodies attended. The evaluation of the seminar by participants was very positive.

49. The first regional training workshop was conducted by the Treaty Section in Thalat, Lao People's Democratic Republic, in February 2003 for Laotian officials, and a second workshop, for countries members of the Association of Southeast Asian Nations and Timor-Leste, was held in Vientiane in October 2003. Topics included depositary practice, human rights treaties and anti-terrorism legislation, reservations, declarations and objections. In October 2004, a seminar sponsored by the Caribbean Community (CARICOM) Secretariat, the Caribbean Development Bank and the United Nations Development Programme was held in Barbados to discuss depository practice, registration of treaties, treaty implementation and reporting requirements, environmental treaties, intellectual property, the International Criminal Court and a number of other topics. In November 2004, a workshop on international experience on the conclusion, accession and implementation of international treaties was held in Hanoi, with the support of the Governments of Finland and Sweden and the United Nations Development Programme. The objective was to convey to Vietnamese officials the experience of experts from other countries and from the United Nations prior to the presentation of the draft law on treaties for approval by the National Assembly of Viet Nam.

50. As at the end of January 2005, 14 requests for additional seminars in capital cities have been received but can only be held if adequate funds are available to supplement the support of host Governments. Discussions are continuing with agencies and private sector entities to make assistance available to countries that seek such assistance.

51. OIOS considers that this recommendation has been implemented.

C. Review by the Sixth Committee

Recommendation 20
Review by the Sixth Committee

The present report, including the conclusions and recommendations of the Committee for Programme and Coordination, should be submitted to the Sixth Committee of the General Assembly, at its fifty-seventh session, for review and action

52. The Sixth Committee, on 10 October 2002, considered relevant parts of the report of the Committee for Programme and Coordination, as well as the in-depth evaluation of legal affairs. The Legal Counsel and a representative of OIOS were present during the discussion. The Sixth Committee took note with satisfaction of paragraph 289 of the report of the Committee for Programme and Coordination, in which that Committee recommended approval of recommendations 1 to 7, 9 and 11 to 20 of the in-depth evaluation. The Chairman of the Sixth Committee informed the Chairman of the Fifth Committee of the above. OIOS considers that this recommendation has been implemented.

III. Conclusions

53. Over the past three years, considerable progress has been made in addressing most of the problems identified in the in-depth evaluation. The provision of general legal services in the United Nations now includes an elaborate web site with nine approved model contracts, discussion of frequently raised legal issues and a great deal of other useful information made directly available to legal practitioners and management and staff throughout the United Nations. The Office of Legal Affairs also conducts annual meetings of United Nations legal liaison officers or advisers and provides early legal assistance in the preparation of complex or innovative commercial contracts. Work on the development and codification of international law includes regional refresher courses, with a focus on areas of international law of direct relevance to the region. Work on international trade law now incorporates enhanced cooperation with other organizations formulating rules in international trade, under the guidance of UNCITRAL, and a work programme and timetable for expanded technical assistance activities. The backlog in the translation and publication of treaties has been significantly reduced, the web site of the United Nations Treaty Collection is actively used and a series of regional workshops and seminars on the practice of the United Nations in the custody and registration of treaties and related matters has been held.

54. There has been much less success in addressing the needs identified in the in-depth evaluation for active involvement by the Office of Legal Affairs in the development and review of new United Nations programmes and in its review of the general legal capacity in other United Nations departments, offices and funds and programmes. OIOS is of the view that the Office should take a more active approach to implementing recommendations 1 and 5 of the in-depth evaluation report by requesting the involvement of the Secretary-General in assisting the Legal Counsel and the Office as a whole in fulfilling the requirements of these recommendations.

55. OIOS also notes some continuing issues relating to expenditure on the translation of treaties, and will review the matter with the relevant departments.

56. Problems also exist with respect to the *Repertory of Practice of United Nations Organs*. At its forty-fourth session, the Committee for Programme and Coordination requested OIOS to include, in future in-depth and thematic evaluations as well as in triennial reviews, a brief section on questions in which intergovernmental guidance and follow-up, by the Committee or other appropriate intergovernmental bodies, would be useful.[9] The question of how to respond to decisions of the General Assembly on the *Repertory*, in relation to recommendation 12 of the evaluation report (see paras. 33-35 above), would benefit from such guidance.

(*Signed*) Dileep **Nair**
Under-Secretary-General for Internal Oversight Services

[9] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 16* (A/59/16), para. 383.